



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Ms. Susan L. Wheeler
University Counsel
University of Houston System
Houston, Texas 77204-2162

OR95-1337

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36632.

The University of Houston System (the "university") received a request for information concerning internal investigations of the Residential Life and Housing department of the university. You state that the former Assistant Director of University Life and Housing was terminated as a result of the investigations. You have submitted the requested records for our review and claim that section 552.103 of the Government Code excepts them from required public disclosure.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." For section 552.103 to apply, the information must relate to litigation to which the university is or may be a party. Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, *see* Open Records Decision No. 551 (1990), and when a person hires an attorney who then asserts an intent to sue, *see* Open Records Decision No. 555 (1990).

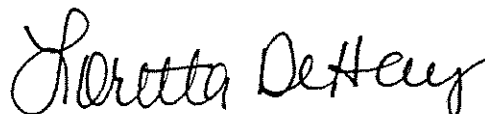
In this case, you have attached a letter from the former employee's attorney and state that he "has notified the university that litigation is imminent if his client is not restored to his former position with the university." The attorney does not threaten to sue the university in the letter attached for our review. It is unclear whether you are relying

on this letter as the sole evidence that the attorney has threatened to sue. If such is the case, we do not believe that the university may reasonably anticipate civil litigation based on the content of the letter. On the other hand, we believe that the university may reasonably anticipate litigation if the university is relying on other statements made by the former employee's attorney that explicitly threaten to sue if the former employee's demands are not met. If such is the case, we further conclude that the requested records relate to the anticipated litigation.

We note, however, that once information has been obtained by all parties to the litigation no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 36632

Enclosures: Submitted documents

cc: Mr. Andy Alford
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(w/o enclosures)